No. 84-1684

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ALLIED CORPORATION,

Petitioner,

v.

DISTRICT 17, DISTRICT 29, LOCAL UNION 7113, and LOCAL UNION 6023, UNITED MINE WORKERS OF AMERICA; and JOHN RAMEY and JOSEPH MCCARDLE, on Behalf of Themselves and Others Similarly Situated,

and

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION FILED BY RESPONDENTS DISTRICT 17, *ET AL.*

Of Counsel:

BRIAN D. FORROW
ROBERT H. SAND
Columbia Road & Park Avenue
Morristown, NJ 07960

WILLIS J. GOLDSMITH
Counsel of Record
ERWIN N. GRISWOLD
DEBORAH CRANDALL

JONES, DAY, REAVIS & POGUE
Metropolitan Square
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Attorneys for Petitioner

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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1. Respondents note that the court below observed that "the employers agreed in the 1978 NBCWA '. . . that the last signatory employer, *or its successor*, of a retired miner would provide the benefits to the retirees.'" Brief in Opposition at 2 n.2 (emphasis in Brief in Opposition). This statement by the court below quite obviously was meant to be limited to the term of the 1978 NBCWA.

Thus, Article I of that NBCWA required each signatory employer to secure the agreement of its successor "to assume . . . [its] obligations *under this Agreement.*" (Emphasis added.) Insofar as its 1974 pensioners are concerned, an employer's obligations under the 1978 NBCWA were limited by Article XX to "*the term of this Agreement.*" (Emphasis added.) Thus, the district court, and the court below, found that those obligations ended on March 26, 1981, the expiration date of the 1978 NBCWA.

2. Respondents state that the 1978 NBCWA required Allied to secure its successors' "undertaking of . . . [its] obligations as last responsible employer." Brief in Opposition at 2. Using the phrase "last responsible employer" begs the question involved in this case, for it assumes that the prior employer continues to be "responsible" despite the fact that the 1978 NBCWA clearly limits each employer's responsibility to provide health benefits for its 1974 pensioners to "the term of this Agreement," which ended on March 26, 1981.

3. Respondents attempt to distinguish *H.K. Porter* and *Carbon Fuel* on the grounds that the court below "merely interpreted and applied Allied's bargain." Brief in Opposition at 5. This argument ignores the fact that Allied's "bargain" with respect to its 1974 pensioners was an agreement to provide health and other non-pension benefits for them until March 26, 1981.

4. Respondents correctly observe that neither *H.K. Porter* nor *Carbon Fuel* was cited to the court below. Brief in Opposition at 4. This is because the court below affirmed the district court's remedy without adopting its rationale. The district court based its decision on the proposition that Article I required Allied to secure its successors' agreements to assume its obligations under the 1978 NBCWA and "any subsequent renewals" thereof. This was contrary to the clear and plain language

of Article I, but did not conflict with *H.K. Porter* or *Carbon Fuel.*

5. Respondents argue that the decision of the court below is consistent with the observation made in *Pittsburgh Plate Glass* that the parties to a collective bargaining agreement may bargain about retirees' benefits if they choose to do so. Brief in Opposition at 7. However, the court below did not reason that Armco and Shanon Pocahontas *voluntarily* would have agreed to bargain with the UMWA about what benefits, if any, they would provide for Allied's 1974 pensioners after March 26, 1981. It reasoned instead that, but for Allied's breach of Article I, the UMWA "would have insisted" that Armco and Shannon Pocahontas bargain with the UMWA about the benefits they would provide in the future for Allied's 1974 pensioners and, moreover, would have agreed to provide future benefits for them. This is plainly contrary to the holding of *Pittsburgh Plate Glass.*

6. Respondents incorrectly assert that the remedy selected for Allied's breach of Article I is "precisely" the Section 301 remedy contemplated by footnote 20 of *Pittsburgh Plate Glass.* Brief in Opposition at 7. This footnote, 404 U.S. at 181 n.20, refers to "vested retirement rights" and therefore is inapposite. The 1978 NBCWA did not give Allied's 1974 pensioners "vested" rights to health benefits. *Cf. UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 104 S. Ct. 1002 (1984). Nor have Respondents ever argued to the contrary. The 1978 NBCWA gave Allied's 1974 pensioners a right to health benefits only until March 26, 1981. It is for this reason that the courts below based their findings and remedies on Allied's supposed breach of Article I (Successorship), rather than on its alleged breach of Article XX (Insurance).

7. Respondents incorrectly assert that the decision of the court below has no significant ramification beyond this litigation. Brief in Opposition at 3. In fact, this case

presents questions of major significance to any court fashioning a remedy for breach of a collective bargaining agreement.

CONCLUSION

The Brief in Opposition presents no reason for denial of Allied's Petition for a Writ of Certiorari.

Respectfully submitted,

Of Counsel:

BRIAN D. FORROW
ROBERT H. SAND
Columbia Road & Park Avenue
Morristown, NJ 07960

WILLIS J. GOLDSMITH
Counsel of Record
ERWIN N. GRISWOLD
DEBORAH CRANDALL

JONES, DAY, REAVIS & POGUE
Metropolitan Square
655 15th Street, N.W.
Washington, D.C. 20005
(202) 879-3939

Attorneys for Petitioner

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